

Comments received on WVABCA Legislative Rules - 176 CSR 1

Comment 1:

By: Drizly – Jacqueline Flug, General Counsel/ Senior Vice President

Dated: June 23, 2021

Summary: The company has an issue with a provision of 175 CSR 2 §3.4.6.e.5.B., and §3.4.6.e.5.B.ii., which there is a similar provision at 176 CSR 1 §3.11.f.6., §3.11.f.6.B., § 3.11.g.6., and §3.11.g.6.B.

The comment relates to the requirement of the Third Party Delivery licensee to collect a stored record and image of purchaser's legal identification when completing delivery of a growler. The concern focusses on privacy laws and the potential for such private data to be hacked or perhaps even maintained in an unsecure manner.

Response: The WVABCA acknowledges the statute does require a method to collect a person's legal identification or information and has developed an alternative method to ease the collection of a stored record and image. The alternative method from 175 CSR 2 §3.4.6.e.5.B., and §3.4.6.e.5.B.ii., as amended, will be added to 176 CSR 1 § 3.11.f.6., and §3.11.g.6.

Comment 2:

By: Staff – internal communication

Dated: June 25, 2021

Summary: W. Va. Code §11-16-11b only permits a one-day license for a Class S1 license and does not permit two consecutive one -day events. The license for consecutive day events is a Class S festival license for up to 10 consecutive days. Please clarify in the rule.

Response: Yes, that is correct and an edit will be made at 176 CSR 1 §3.11.b.1.

Comment 3:

By: Staff – internal communication

Dated: June 25, 2021

Summary: Please clarify that a brewpub may or may not be licensed as a private club bar or private club restaurant.

Response: Yes, a brewpub may only obtain a private manufacturer club license. Language will be added at 176 CSR 1 §3.7.

Comment 4:

By: Staff – internal communication

Dated: June 25, 2021

Summary: Can distributors provide or charge for advertising material greater than \$25 per SKU?

Response: No, unless the distributors rents or charges for the advertising material greater than \$25 per SKU to the licensee at no less than actual cost and maintains records of such transaction. Edit will be made at 176 CSR 1 §6.3.c.1.

Comment 5:

By: Phillip A. Reale on behalf of the West Virginia Beer Wholesalers Association (WVBWA)

Dated: July 1, 2021

Summary: Limited comments with no real objection to the rule other than some possible typos. The WVBWA believes that the monumental changes in HB 2025 are not well understood by industry members. The comment specifically notes 176 CSR 1 §3.2.e. (deals with resident brewer reporting requirements), as a potential source of unawareness by industry members. The WVBWA suggests the WVABCA conduct workshops to educate and train industry members on the HB 2025 requirements and any public health requirements.

Response: The WVABCA has worked diligently to upload the bill, summaries, applications and forms to the WVABCA website at www.abca.wv.gov prior to the bill's effective date. The WVABCA has disseminated information to the WV Retailer's Association, retail liquor outlets, to the WV Hospitality and Tourism Association via an online webinar, to the WV Bar Association through a CLE course on recent changes in Alcohol Law, will also conduct a training session at the WV Bar Association's annual meeting in July, and the WVABCA is meeting with or doing conference calls with parties interested in certain new licenses.

In previous years, the WVABCA has conducted training and question and answer sessions at the WVBWA annual meeting. The WVABCA has not been requested to present at WVBWA annual meeting since 2018. If the WVBWA has a meeting, the WVABCA would, if requested, attempt to provide a session or training for that meeting.

The WVABCA is committed to educating licensees but with over 5000 licensees finding a venue making sure the correct parties attend is quite difficult. Additionally, the WVABCA is not aware of any retail on-premises association or group.

Again, the WVABCA has focused on its website (also Facebook - @WVABCA1 and Twitter - @WVABCA) which remains a great source of information and education.

Comment 6:

By: Richie Heath, WV Hospitality & Travel Association

Dated: June 30, 2021

Summary: The comment submitted is more specific to 175 CSR 2 with respect to private outdoor dining and private outdoor street dining.

Response: No response for 176 CSR 1.



June 23, 2021

VIA E-MAIL

Anoop Bhasin, General Counsel
West Virginia ABC
900 Pennsylvania Avenue, 4th Floor
Charleston, West Virginia 25302

Re: Proposed Rules

Dear Ms. Bhasin:

I write on behalf of Drizly, the nation's largest platform for on demand alcohol delivery. Drizly connects consumer with local retailers in a compliant manner in over 130 markets nationally. I write concerning the proposed changes to Title 175 Section addressing the off-premise delivery of alcoholic beverages. More specifically, I write concerning the proposed rules in Sections 3.4.6.e.5.B and 3.4.6.e.5.B.ii which appear to contradict themselves.

Section 3.4.6.e.5.B states:

Any mobile ordering application or web-based software used *shall create a stored record and image of the purchasing person's legal identification* and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information; and *(Emphasis Added)*.

Yet, Section 3.4.6.e.5.B.ii creates an alternative means of recording identification data that does not involve a stored image. If the agency insists that all web-based software or ordering applications store an image, then the alternative in Section 3.4.6.e.5.B.ii is meaningless as no one may avail themselves of this alternative.

The alternative means of recording data is important for those that engage in e-commerce as privacy laws such as W. Va. Code §46A-2A-101 set strict standards for how this data must be maintained. Accordingly, because a driver's licenses contain large amounts of personally identifiable information most entities choose not to store it and avoid being targets for cyber crimes. Additionally, in the context of local licensed retailers, these businesses tend to be ill-equipped to retain sensitive personally identifiable information in a secure manner as they are in the business of selling alcoholic beverages not data security.

Accordingly, Drizly respectfully asks that Section 3.4.6.e.5.B. be amended to remove the word "shall" and replace it with the word "may" or alternatively incorporate language from Section 3.4.6.e.5.B.ii.

Thank you in advance for your time and attention to this matter.

Sincerely,

Jacqueline Flug
General Counsel/ Senior Vice President

WVABCA
STAFFS OFFICE

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June 30, 2021

Anoop Bhasin
General Counsel
WV Alcohol Beverage Control Administration
900 Pennsylvania Ave., 4th Floor
Charleston, WV 25302

RE: Written Comments on Proposed WV ABCA Legislative Rules

Dear Mr. Bhasin,

On behalf of the West Virginia Hospitality & Travel Association (WVHTA), I am writing today to share written comments on the WV Alcohol Beverage Control Administration's (WVABCA) two proposed legislative rules on private club licensing (175-02) and nonintoxicating beer licensing operations and procedures (176-01).

WVHTA is extremely supportive of the recent efforts of Governor Justice, members of the Legislature and the WVABCA to provide greater flexibility with respect to West Virginia's alcoholic beverage laws and regulations. The passage of H.B. 2025 during the 2021 Regular Session was a critical step in preserving many of the new concepts developed during the recent State of Emergency caused by the COVID-19 pandemic. Its effective implementation will help the businesses of many in West Virginia's hospitality and travel industry as we emerge from the pandemic and face a pent-up demand from consumers to return to traditional hospitality, travel and dining opportunities.

As an initial matter, we would make one general suggestion with respect to both proposed rules 175 CSR 2 and 176 CSR 1. It is clear that the legislative intent of H.B. 2025 was to provide greater flexibility and freedom with respect to the state's alcohol beverage laws in order to promote economic development throughout the state. To that end, we would simply encourage the WVABCA to keep this legislative intent in mind as it promulgates both rules through the legislative rule-making review process.

WVHTA members are still very much digesting the 100+ page statute enacted through H.B. 2025, along with the more than 100 pages of proposed legislative rules. Members of the hospitality and travel industries are very much trying to familiarize themselves with how many of the newly enacted concepts and licenses will benefit their businesses. As they continue to do so, we would request that the WVABCA take every opportunity to preserve the legislative intent of H.B. 2025 in its legislative rules and ensure that the enhanced flexibility and relaxed restrictions are maintained through the legislative rules. H.B. 2025 was intended to make the operation of the state's alcohol beverage laws easier for licensees and consumers alike. We hope that the WVABCA will continue to preserve that intent in the proposed rules.

Based upon the feedback we've received from WVHTA members to date, we would also submit one specific recommendations for your consideration at this time.

Proposed rule 175 CSR 2 addresses the issue of private outdoor dining and private outdoor street dining in numerous places throughout the rule. Of note, the proposed rule includes language with respect to the authorization of "limited entertainment (ex. recorded music or limited live music) or alcoholic beverage service" in the outdoor dining or street dining area. *See, for instance*, WV CSR § 3.4.11.a-b. As written, the proposed rule would require the Commissioner to deny "such entertainment or alcoholic beverage service" if, in his or her determination, the entertainment or beverage service "has the appearance or function of a festival, event, concert, or in any other manner exceeds what is necessary for..." private outdoor dining or private outdoor street dining.

Many WVHTA members believe that this language is excessively vague and could lead to disparate treatment amongst licensees. For instance, it is unclear what would constitute the "appearance...of a festival, event...[or] concert." As proposed, the rule also includes an extremely broad catch-all that raises enforcement concerns, as it is uncertain what exactly would be included in the Commissioner's determination that entertainment or beverage service "exceeds *what is necessary for*" outdoor dining or outdoor street dining. As neither the authorizing statute nor the proposed rule define "what is necessary for" outdoor dining services, we fear this provision is ripe for abuse.

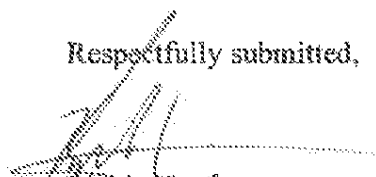
Understanding what we believe the initial intent of WVABCA is with respect to the provision of limited entertainment and alcohol beverage service, we would suggest that something along the following lines would eliminate existing ambiguities and strengthen the provisions overall:

The Commissioner may, at his or her discretion, authorize limited entertainment (ex. recorded music or limited live music) or alcoholic beverage service in the private outdoor dining area, however, *where any such entertainment or alcohol beverage service appears to otherwise meet the requirements of a temporary event, fair or festival, the Commissioner may, at his or her discretion, require the licensee to obtain a special license for a private fair and festival pursuant to W.Va. Code § 60-7-8a.*

Should this or similar language be amenable to the WVABCA, we would recommend a global change to all such private outdoor dining and outdoor street dining references within 175 CSR 2.

We thank you for your time and consideration of these comments. We also greatly appreciate the efforts of the WVABCA to date to familiarize licensees and consumers alike with the provisions of H.B. 2025. We know that many have had questions regarding the implementation of the new laws and the informational materials provided by the WVABCA on its web site have been extremely useful. To the extent that you have questions regarding any of these suggestions, or would like to discuss our comments on the proposed rules further, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richie Heath", is written over a horizontal dotted line.

Richie Heath

WVHFA Executive Director



LAW OFFICE OF
PHILIP A. REALE, PLLC

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July 1, 2021

VIA ELECTRONIC MAIL

Anoop Bhasin, General Counsel
WV Alcohol Beverage Control Administration
900 Pennsylvania Ave., 4th Floor
Charleston, WV 25302
Anoop.K.Bhasin@wv.gov

**Re: Official Comments of the West Virginia Beer Wholesalers Association
Proposed Amendments to 176 CSR 1**

Dear Mr. Bhasin:

First and foremost, thank you for the incredible comprehensive effort in addressing the amendment to legislative rules essential to implementation of the massive volume of changes in West Virginia statutory law covering many and varied facets of wine, liquor, spirits, non-alcoholic beer, nonintoxicating beer and other miscellaneous related changes in West Virginia public policy emanating in large measure from the passage of House Bill 2025 by the West Virginia Legislature during the 2021 Regular Session and signed into law by Governor Justice. Your work in stringing together many overlapping circumstances involving the many interests covered in the proposed rule changes is remarkable.

The comments of the WVABCA are very limited. In fact, there is nothing objectionable although there are a few things which may deserve a comment. Additionally, there are some instances in which careful proofreading may reveal a few typographical errors and I will be most happy to discuss those with you if they have not already been corrected. They are not substantive at all.

The magnitude and complexity of the changes in statutory law covered by the proposed rule changes are enormous. The work of the ABCA essential to written articulation of the numerous changes to the existing rule, while preserving intact that of the existing rule which has not changed, is remarkable. However, I might imagine there are some who disagree as to certain changes and the disagreement likely derives from a disagreement with the underlying statutory provision to which the language of the rule applies. I too might have disagreement with various items of policy in House Bill 2025, but I fail to see disagreement with the proposed revisions of the rule to implement the dictates of the legislation itself.

I do believe that House Bill 2025 represents monumental change to what various licensees may do and how they must conduct their business to take advantage of change. There are many instances in which there must be a change from pre-HB 2025 practices and from existing 176 CSR 1. My suspicion is that much of §3.2.e involves new provisions of which licensees and industry members have little specific awareness.

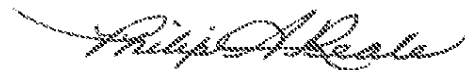
To that end, the only suggestion from the WVBWA is that the ABCA use the power of its organization to lead the various members of the alcoholic beverage industry in a workshop or series of educational workshops to provide clear education on the governing policies of their individual activities, as well as policies relating to the interaction between participants in the supply chain of alcoholic beverages

in West Virginia. With the amount of change imposed by House Bill 2025, the timing could not be better for the type of activity the WVBWA believe is warranted. The significance of a better understanding of relative rights, duties and responsibilities between members of the supply chain cannot be overstated. The WVBWA does not offer this suggestion without being a willing contributor and participant in the organization and execution of an event with a focus on professional education for the West Virginia alcoholic beverage industry. We are not suggesting an event in which industry members or individuals get to debate what public policy should be or the governing law and new rule ought to be. Rather, we are suggesting that many in industry seek clarity in terms of what the law and rules require, often because they themselves have not been educated nor understand the fundamental need to protect public health and safety. At this time of such massive change in the industry, and affecting virtually every element of the industry, it seems that the time is right for the program of education we hope for as a means of further professionalizing the industry in West Virginia. Not only will an education effort help the supply chain work more effectively, but West Virginia consumers will also be beneficiaries of such.

To the extent that there are overlapping areas of federal law and involvement of federal agencies, the WVBWA is willing to assist by working through its affiliated organizations to assist with professionals who we know would be willing to share the burden of facilitating some of the educational services sought. Still, the WVBWA recognizes that the lead actor in any such endeavor must be the WV ABCA regardless of who contributes to the effort through financial or human resources to make the educational program a reality. We stand as a willing partner in the quest to provide an orderly marketplace as well as one that provides ultimate safety to West Virginia consumers who purchase their beverages of choice.

Should you wish to discuss any of the foregoing as part of the official comment process or otherwise, I am always available.

Very Truly Yours,



Philip A. Reale
Executive Director
WV Beer Wholesalers Association